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## DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS FOR BIRCHWOOD BEACH CONDOMINIUMS

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## DECLARATION OF CONDOMINIUM OWNERSHIP AND BY-LAWS, EASEMENTS, RESTRICTIONS AND COVENANTS FOR BIRCHWOOD BEACH CONDOMINIUMS

THIS DECLARATION made and entered into by Birchwood Beach Condominiums, LLC, an Illinois Limited Liability Company, (hereafter "Declarant").

WHEREAS, the Declarant is the legal title holder of the following described real estate situated in the City of Chicago, County of Cook and State of Illinois:

THE WEST 100 FEET OF LOT 12 IN BLOCK 7 IN BIRCHWOOD BEACH, IN SECTION 29, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. # 11-29-307-006

Common Address: 1421-29 West Birchwood Avenue, Chicago, IL 60626

WHEREAS, it is the desire and intention of the Declarant to enable the Property (as hereinafter defined), which includes, but is not limited to, said real estate together with the building, structure, improvements and other permanent fixtures of whatsoever kind now or hereafter thereon and all rights and privileges belonging or in anywise pertaining thereto, to be owned by Declarant and by each successor in interest of Declarant under that certain type or method of ownership commonly known as "CONDOMINIUM," and to submit the Property to the provisions of the Condominium Property Act of the State of Illinois, as amended from time to time; and

WHEREAS, the Declarant has elected by this Declaration to establish, for the benefit of such Declarant and for the mutual benefit of all future Unit Owners or occupants of the Property, or any part thereof, a condominium association which shall be known as:

### BIRCHWOOD BEACH CONDOMINIUM ASSOCIATION

or by such other name as may be subsequently adopted pursuant to the Act by the Developers or the Board, certain easements and rights in, over and upon said Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, the Declarant has further elected by this Declaration to declare that the several Unit Owners, occupants, mortgagees and other persons acquiring any interest in the Property shall at all times enjoy the benefits of, and shall at all times hold their interests subject to, the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of ownership and to facilitate the proper administration of such Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

NOW THEREFORE, the Declarant aforesaid, as the legal titleholder of the real estate heretofore described, and for the purposes above set forth, DECLARES AS FOLLOWS:

### ARTICLE I

#### DEFINITIONS

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

- a) "Act" means the "Condominium Property Act" of the State of Illinois as amended from time to time.
- b) "Building" means any structure, attached or unattached, containing one or more Units.
- c) "Common Elements" means all portions of the Property except the Units, including Limited Common Elements unless, otherwise specified.
- d) "Common Expenses" means the proposed or actual expenses affecting the Property, including Reserves, if any, lawfully assessed by the Board of Managers or the Condominium Instruments.
- e) "Condominium Instruments" means all documents and authorized amendments thereto recorded pursuant to the provisions of the Act, including the Declaration, By-Laws and Plat.

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- f) "Declaration" means this instrument, by which the Property is submitted to the provisions of the Act, as hereinafter provided, and as this Declaration may be amended from time to time.
- g) "Developer" means Birchwood Beach, LLC, and its successors or assigns.
- h) "Development" means such property submitted to the provisions of the Act by this Declaration.
- i) "Limited Common Elements" means a portion of the Common Elements so designated in the Declaration as being reserved for the use of certain Units to the exclusion of other Units.
- j) "Majority" or "Majority of the Unit Owners" means the owners of more than fifty percent (50%) in the aggregate in interest of the undivided ownership of the Common Elements. Any specified percentage of the Unit Owners means such percentage in the aggregate in interest of such undivided ownership.
- k) "Occupant" means a person, or Unit Owner, in possession of one or more Units.
- l) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.
- m) "Parcel" means the parcel or tract of real estate heretofore described, submitted to the provisions of the Act.
- n) "Plat" means a plat or plats of survey of the Parcel and of all kinds of Units in the Property submitted to the provisions of the Act, which may consist of a three-dimensional horizontal and vertical delineation of all such Units.
- o) "Property" means all the land, property and space comprising the Parcel, all improvements and structures erected, constructed or contained therein or thereon, including the building or buildings and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of this Act.
- p) "Purchaser" means any person or persons other than the Developer who purchases a Unit in a bona fide transaction for value.
- q) "Reserves" means those sums paid by Unit Owners which are separately maintained by the Board of Managers for purposes specified by the Board of Managers or the Condominium Instruments.
- r) "Unit" means a part of the Property designed and intended for any type of independent use.
- s) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit.
- t) "Unit Owners' Association" or "Association" means the Association of all the Unit Owners, acting pursuant to By-Laws through its duly elected Board of Managers.
- u) "Voting Member" means the person entitled to exercise all voting power in respect to each Unit Ownership.

## ARTICLE II

### DESCRIPTION OF PARCEL

1. Description. All Units in the Building are delineated on the Plat attached hereto as Exhibit "A" and made a part of the Declaration and are legally described as follows:

Unit Numbers: 1421-G, 1421-1W, 1421-2W, 1421-3W, 1421-1E, 1421-2E, 1421-3E, 1425-G, 1425-1N, 1425-2N, 1425-3N, 1425-1S, 1425-2S, 1425-3S, 1427-G, 1427-1N, 1427-2N, 1427-3N, 1427-1S, 1427-2S, 1427-3S, 1429-G, 1429-1W, 1429-2W, 1429-3W, 1429-1E, 1429-2E, 1429-3E, in the Birchwood Beach Condominiums as delineated on a Plat attached of the following described real estate:

THE WEST 100 FEET OF LOT 12 IN BLOCK 7 IN BIRCHWOOD BEACH, IN SECTION 29, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.IN. # 11-29-307-006

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Common Address: 1421-29 West Birchwood Avenue, Chicago, IL 60626

which plat is attached as Exhibit "A" to the Declaration of Condominium together with its undivided interest in the common elements.

It is understood that each Unit consists of the space enclosed or bounded by the horizontal and vertical planes set forth and identified as a Unit in the delineation thereof in Exhibit "A" The legal description of each Unit shall consist of the identifying number or symbol of such Unit followed by the legal description of the Property, as set forth herein. Except as provided by the Act, no Unit Owner shall, by deed, Plat or otherwise, subdivide or in any other manner cause a Unit to be separated into any tracts or parcels different from the whole Unit as shown on Exhibit "A"

2. Certain Structures Not Constituting Part of a Unit. No structural components of the Building, no pipes, wires, conduits, public utility lines, ducts, flues and shafts situated within a Unit and forming part of any system serving one or more other Units, and no portion of the Common Elements shall be deemed part of said Unit.

## ARTICLE III

### COMMON ELEMENTS

1. Description. Except as otherwise provided in this Declaration, the Common Elements shall consist of all portions of the Property except the Units. Without limiting the generality of the foregoing, the Common Elements shall include the land, outside walls, landscaping, roof, structural parts of the Building, component parts of walls, floors and ceilings and all portions of perimeter doors and all portions of windows in perimeter walls, and pipes, ducts, flues, shafts and public utility lines serving the Common elements of more than one Unit.

2. Ownership of Common Elements. Each Unit Owner shall own an undivided interest in the Common Elements as a tenant in common with all the other Unit Owners and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit and for such other incidental uses permitted by this Declaration, which right shall be appurtenant to and run with his Unit. Such right shall extend to each Unit Owner, and the agents, servants, tenants, family members and invitees of each Unit Owner. Each Unit Owner's interest shall be expressed by a percentage amount and, once determined, shall remain constant and shall not be changed without unanimous approval of all Unit Owners, unless hereafter changed by recorded Amendment to this Declaration consented to in writing by all Unit Owners, or unless the Developer adds to the Development as hereinafter provided. The Declarant has so determined each Unit's corresponding percentage of ownership in the Common Elements as set forth in Exhibit "B" attached hereto; and each Unit Owner shall accept such determination. Notwithstanding anything to the contrary contained in this Declaration, neither the Board, the Association, any Unit Owner, nor the Developer shall be considered a bailee of any personal property stored in the Common Elements and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence.

3. Limited Common Elements. Except as otherwise provided in this Declaration, the Limited Common Elements shall consist of all portions of the Common Elements set aside and allocated for the restricted use of particular Units. Without limiting the generality of the foregoing, the Limited Common Elements shall include the following: windows appurtenant to the Unit; perimeter doors; windows in perimeter walls; and any patio, porch, deck, terrace or balcony, direct access to which is provided from a Unit and which is located outside of and adjoining such Unit.

4. Assignment of Limited Common Elements. Any patios, terraces or balconies are assigned to the Unit which they adjoin and from which direct access to such patios, terraces or balconies may be obtained.

5. Transfer of Limited Common Elements. The use of Limited Common Elements may be transferred between Unit Owners at their expense, provided that the transfer may be made only in accordance with the Condominium Instruments and the provisions of this Declaration. Each transfer shall be made by an Amendment to the Declaration executed by all Unit Owners who are parties to the transfer and consented to by all other Unit Owners who have any right to use the Limited Common Elements affected. The Amendment shall contain a certificate showing that a copy of the Amendment has been delivered to the Board of Managers. The Amendment shall contain a statement from the parties involved in the transfer which sets forth any changes in the parties' proportionate shares. If the parties cannot agree upon a reapportionment of their respective shares, the Board of Managers shall decide such reapportionment. No transfer shall become effective until the Amendment has been recorded.

## ARTICLE IV

### GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS

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1. Submission of Property to Provisions of Act. The Property is hereby submitted to the provisions of the Act.

2. No Severance of Ownership. No Unit Owner shall execute any deed, mortgage, lease or other instrument affecting title to his Unit Ownership without including therein both his interest in the Unit and the corresponding ownership in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without also including the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

3. Easements. (a) Encroachments. If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any portion of the Common Elements or any other Unit as a result of the construction, repair, reconstruction, settlement or shifting of any building, a valid mutual easement shall exist in favor of the owners of the Common Elements and the respective Unit Owners involved to the extent of the encroachment. A valid easement shall not exist in favor of any Unit Owner who creates an encroachment by his intentional, willful or negligent conduct or that of his agent.

(b) Utility Easements and Commercial Entertainment. The Ameritech Telephone Company, Commonwealth Edison Company, Peoples Gas Company and all other public utilities and cable television companies or other similar entertainment service companies serving the Property are hereby granted the right to lay, construct, renew, operate and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment for the purpose of providing and maintaining such utility and service to the Property into, over, under, along and on any portion of the common Elements and the Units, where reasonably necessary for the purpose of providing utility and commercial entertainment services to the Property.

(c) Additional Easements. The Board may hereafter grant other or additional easements for utility or commercial entertainment purposes for the benefit of the Property, over, under, along and on any portion of said Common Elements, and each Unit Owner and each mortgagee of a Unit hereby grants to the Board an irrevocable power of attorney coupled with an interest to execute, acknowledge and record in the name of such Unit Owner, such instruments as may be necessary or appropriate to effectuate the foregoing.

(d) Recording of Easements. The Developer hereby reserves to itself and the Association, and their respective successors and assigns, the right, without notice to, or the consent of, any Unit Owner or mortgagee of a Unit, to record a supplement to the Plat showing the location of any or all of such utility or commercial entertainment conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment "as built" and (ii) to record, from time to time, additional supplements, showing additions, modifications and deletions to any or all of such conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment. Once the location of the easement to any such utility or other entity is shown by any supplement or additional supplement to the Plat as aforesaid, the easement granted by this Article IV, Paragraph 3(b) to such utility or other entity shall be limited to the area or areas located within ten feet on either side of the equipment of such utility or other entity shown on such supplement or additional supplement. A power coupled with an interest is hereby granted to the Developer and the Association, acting by and through their respective duly authorized officers, their respective successors, assigns, agents and designees, and each of them singly without the other's concurrence, as attorney-in-fact to do or cause the foregoing to be done. The acceptance of each deed, mortgage, trust deed or other instrument with respect to a Unit shall be deemed a grant of such power to each of said attorney-in-fact, an acknowledgment of a consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to record any and all such supplements.

(e) Blanket Easement in Favor of Developer and Other Parties and Other Easements. The right of the Unit Owners to use and possess the Common Elements as set forth in Article III hereof shall be subject to the Declaration and a blanket easement over the Common Elements in favor of the Developer, and their respective representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns, for the purpose of (i) access and ingress to and egress from the Common Elements, (ii) construction, installation, repair, replacement and restoration of utilities, buildings, landscaping and any other improvements on the Property or any part thereof, and (iii) the installation and maintenance of signs advertising the residences on the Property, or any part thereof, and signs directing potential purchasers to the sales office and models erected in connection with such residences. The foregoing easements shall continue until such time as the Developer ceases to hold legal title to any Units; at which time such easements shall cease and be of no further force and effect without the necessity of any further action. The foregoing easements shall be deemed and taken to be covenants running with the land.

4. Easements and Rights to Run With Land. All easements and rights described herein are easements and rights running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Unit Owner, purchaser, mortgagee and other person having an interest in the Property or in any part or portion thereof. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Article or in any other part of this Declaration shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such Unit Ownership as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

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## ARTICLE V

### COMMON EXPENSES, MORTGAGES AND REAL ESTATE TAXES

1. Common Expenses. Each Unit Owner shall pay his proportionate share of the common expenses of administration, maintenance, and repair of the Common Elements and of any other expenses incurred in conformance with the Declaration and By-Laws or otherwise lawfully agreed upon. Such proportionate share of the common expenses for each Unit Owner shall be in the same ratio as his percentage of ownership in the Common Elements. Payment thereof shall be in such amounts and at such times as determined in the manner provided in the By-Laws. If any Unit Owner shall fail or refuse to make any such payment of the common expenses when due, the amount thereof shall constitute a lien on the interest of such Unit Owner in the Property as provided in the Act. Each Unit Owner shall deposit with the Developer, or its successor in interest, at the time of Closing of his purchase of his Unit, an amount equal to three times the first full monthly assessment for such Unit, which the Board shall use for working capital needs.

2. Separate Mortgages. Each Unit Owner shall have the right, subject to the provisions herein, to make a separate mortgage or encumbrance on his respective Unit together with his respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to make or create or cause to be made or created any mortgage or encumbrance or other lien on or affecting the Property or any part thereof, except only to the extent of his Unit and, his respective ownership interest in the Common Elements.

3. Separate Real Estate Taxes. It is understood that real estate taxes are to be separately taxed to each Unit Owner for his Unit and his corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that for any year such taxes are not separately taxed to each Unit Owner, but are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements.

## ARTICLE VI

### INSURANCE

1. Fire and Hazard Insurance. The Board of Manager shall acquire, as a common expense, a policy or policies of insurance insuring the Common Elements and the Units against loss or damage from fire, lightning and other hazards contained in the customary fire and extended coverage policy, together with, vandalism and malicious mischief endorsements, for the full (100%) current replacement cost of the Common Elements and the Units written in the name of the Board. The proceeds of such policies shall be payable to the members of the Board, as trustees for each of the Unit owners in the percentages established in Exhibit "B".

All said policies of insurance (1) shall contain standard mortgage clause endorsements in favor of the mortgagee or mortgagees of each Unit, if any, as their respective interest may appear, (2) shall provide that the insurance, as to the interest of the Board, shall not be invalidated by any act or neglect of any Unit owners, (3) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement therefore, such option shall not be exercisable in the event the Unit Owners elect to sell the Property or remove the Property from the provisions of the Act, (4) shall contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days' prior written notice to the mortgagee of each Unit, (5) shall contain a clause or endorsement whereby the insurer waives any right to be subrogated to any claim against the Association or its officers, members of the Board, the Declarant, the Developer, the managing agent, if any, and their respective employees and agents and the Unit Owners and Occupants, and (6) shall contain a "Replacement Cost Endorsement." The proceeds of such insurance shall be applied by the Board, or by the corporate trustee or agent on behalf of the Board, for the reconstruction of the Building or shall be otherwise disposed of in accordance with the provisions of this Declaration and the Act; and the rights of the mortgagee of any Unit under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions of the Act with respect to the application of insurance proceeds to reconstruction of the Building. The Board may engage the services of, and such insurance may be payable to, a bank or trust company authorized to execute and accept trusts in Illinois to act as an Insurance Trustee, or as Agent or Depository as an alternative to Insurance trustee, or as Agent or Depository as an alternative to acting as Trustee, and to receive and disburse the insurance proceeds resulting from any loss upon such terms as the Board shall determine, consistent with the provisions of this Declaration. The fees of such bank or trust company shall be common expenses.

In the event of any loss in excess of \$5,000.00 in the aggregate, at the Board's discretion the Board shall solicit bids for reconstruction work for repairs from reputable contractors.

Payment by an insurance company to the Board or to such corporate trustee or agent of the proceeds of any policy, and the receipt of release from the Board or such corporate trustee or agent of the company's liability under such policy, shall constitute a full discharge of such insurance company; and such company shall be under no obligation to inquire into the terms of any trust or agency agreement under which proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or see to the application of any payments of the proceeds of any policy by the Board or the

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corporate trustee.

Each Unit Owner shall inform the Board in writing of additions, alterations or improvements made by said Unit Owner to his Unit and the value thereof, which value may be included in the full replacement insurable cost for insurance purposes. Any increased premium charge therefor shall be assessed to that Unit Owner under the provisions of Section 9 of the Act. If a Unit Owner fails to inform the Board as provided above and a penalty is assessed in the adjustment of loss statement, the Unit Owner shall be responsible for such penalty.

2. Appraisal. The full, insurable replacement cost of the Property, including the Units and Common Elements, shall be determined from time to time (but not less frequently than once in any twelve-month period) by the Board. The Board as it deems necessary in its sole discretion may obtain an appraisal by a reputable appraisal company as selected by the Board. The cost of such appraisal shall be a common expense.

3. Other Insurance. The Board shall have authority to and shall obtain insurance for the Property as follows:

(a) Public Liability and Property Damage Insurance. The Board of Managers shall acquire, as a common expense, comprehensive public liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the property, in amounts deemed sufficient in the judgment of the Board of Managers, insuring the Developer and Unit Owners, individually and severally, the Board of Managers, the Unit Owner's Association, the Management Agent, and their respective employees, agents and all persons acting as agents. The Developer shall be included as an additional insured in his capacity as unit owner and board member. The Unit Owners shall be included as additional insured, but only with respect to that portion of the premises not reserved for their exclusive use. The insurance shall cover claims of one or more insured parties against other insured parties. The insurance shall contain a waiver of any rights to subrogation by the insuring company against any of the above named insured persons.

(b) Directors and Officers Liability. Directors and Officers Liability Insurance in such amounts as the Board shall determine to be reasonable.

(c) Workmen's Compensation Insurance as required by local law.

(d) Miscellaneous Insurance. Such other insurance, which may include, without limitation, any or all of the following, in such amounts as the Board shall deem desirable and such other insurance as may be required pursuant to this Declaration; Errors and Omissions coverage for the directors of the Board; and Medical Payments coverage for members of the public (not Unit Owners) injured on the Property, without regard to liability of the Board or the Association. The premiums for the above-described insurance and bond, except as otherwise provided in this Section, shall be Common Expenses.

## ARTICLE VII

### ADMINISTRATION AND OPERATION

1. Administration. The administration of the Property shall be vested in the Board of Managers, consisting of five (5) persons who shall be elected in the manner provided in the By-Laws contained herein at ARTICLES XIII, XIV, XV, XVI and XVII. The Developer shall cause to be incorporated under the laws of the State of Illinois, a not-for-profit corporation (herein referred to as the "Association") under the name of BIRCHWOOD BEACH CONDOMINIUM ASSOCIATION or a similar name, which corporation shall be the governing body for all the Unit Owners for the maintenance, repair, replacement, administration and operation of the Common Elements and for such other purposes as are hereinafter provided. The Board of Directors of the Association shall be deemed to be the Board of Managers referred to herein and in the Act.

2. Duties and Powers of the Association. The Association shall be responsible for the overall administration of the Property through its duly elected Board of Managers. The duties and powers of the Association and its Board shall be those set forth in its Articles of Incorporation, the By-Laws and this Declaration; provided however, that (i) the terms and provisions of the Act shall control in the event of any inconsistency between the Act, on the one hand, and this Declaration, the Articles of Incorporation and the By-Laws on the other hand, and (ii) the terms and provisions of this Declaration shall control in the event of any inconsistency between this Declaration, on the one hand, and the Articles of Incorporation and the By-Laws on the other hand.

3. Indemnity. Neither the members of the Board nor the officers thereof of the Association shall be liable to the Unit Owners for any mistake of judgment, or any acts or omissions made in good faith or contrary to the provisions of this Declaration. The liability of any Unit Owner arising out of any contract made by such members or officers out of the aforesaid indemnity shall be limited to such proportion of the total liability thereunder as his percentage interest in the Common Elements. Each agreement made by such members or officers or by the managing agent on behalf of the Unit Owners or the Association shall be executed by such members or officers or the managing agent, as the case may be, as agents for the Unit Owners or for the Association.

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4. Board's Determination Binding. In the event of any dispute or disagreement between any Unit Owners relating to the property, or any question or interpretation or application of the provisions of this Declaration or the By-Laws, the determination thereof by the Board shall be final and binding on each and all of the such Unit Owners.

5. Administration of Board of Managers. Until the election of the first unit owner Board of Managers, which shall be composed of a majority of Unit Owners other than the Developer (first unit owner Board of Managers) the same rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board of Managers by the Act and by this Declaration and the By-Laws shall be held and performed by the Developer. The election of the first unit owner Board of Managers shall be held pursuant to the provisions of the By-Laws contained herein. If the first unit owner Board of Managers is not elected by the Unit Owners at the time so established, the Developer shall continue in office for a period of thirty (30) days, whereupon written notice of his resignation shall be sent to all the Unit Owners entitled to vote at such election. Within sixty (60) days following the election of the first unit owner Board of Managers, the Developer shall deliver to the Board of Managers:

(a) All original documents pertaining to the property and administration, such as the Declaration, By-Laws, Articles Of Incorporation, and Condominium Instruments; annual reports, minutes, and rules and regulations; contracts and leases, if any; or other agreements, if any, entered into by the Association;

(b) An accounting by the Developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the Property, and copies of all insurance policies;

(c) Association funds, which shall have been at all times segregated from any other moneys of the Developer;

(d) Any contract, lease, or other agreement made prior to the election of the first unit owner Board of Managers by or on behalf of Unit Owners.

6. Prior Contracts. Upon election of the first unit owner Board of Managers, any contract, lease or other agreement made prior to the date of election of the first unit owner Board by or on behalf of Unit Owners, individually or collectively, the unit owner association, the Board of Managers or the Developer or its affiliates which extends for a period of more than 2 years from the date of the election shall be subject to cancellation by a majority of the votes of the Unit Owners other than the Developer cast at a special meeting called for that purpose during the 180 day period beginning on the date of the election of the first unit owner Board. At least 60 days prior to the expiration of the 180 day cancellation period, the Board of Managers shall serve notice to every Unit Owner, notifying them of this provision, what contracts, leases or other agreements are affected, and the procedure for calling a meeting of the Unit Owners for the purpose of voting on termination of such contracts, leases or other agreements. During the 180 day cancellation period the other party to the contract, lease or other agreement shall also have the right of cancellation. The cancellation shall be effective 30 days after mailing notice by certified mail, return receipt requested, to the last known address of the other parties to the contract, lease or other agreement. Notwithstanding anything herein to the contrary, the Unit Owners shall have a right of termination, upon not greater than 90 days notice to the other party to the contract, for any management contract, employment contract or lease of recreational or parking areas or facilities, if any, or for any contract or lease, including franchises and licenses, to which Declarant or Developer is a party.

## ARTICLE VIII

### MAINTENANCE, ALTERATIONS AND DECORATING

1. Maintenance Repairs and Replacements. Each Unit Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit. Maintenance, repairs and replacements of the Common Elements shall be furnished by the Board as part of the Common Expenses, subject to the rules and regulations of the Board.

The Board may cause to be discharged any mechanic's lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the Property or Common Elements, rather than against a particular Unit and its corresponding percentage of ownership in the Common Elements. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses (including attorney's fees) incurred by reason of such lien. Whenever the Board shall determine, in its discretion, that any maintenance or repair of any Unit is necessary to protect the Common Elements or any other portion of the Building, the Board may cause a written notice of the necessity for such maintenance or repair to be served upon such Unit Owner, which notice may be served by delivering a copy thereof to any Occupant of such Unit, or by mailing the same by certified or registered mail addressed to the owner at the Unit. If such Unit Owner fails or refuses to perform any such maintenance or repair within a reasonable time stated in the notice (or any extension thereof approved by the Board), the Board may cause such maintenance or repair to be performed at the expense of such Unit Owner. If, due to the act or neglect of a Unit Owner, or of a member of his family, household pet, guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or



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maintenance, repairs or replacements shall be required which would otherwise be at the common expense, then such Unit Owner shall pay for such damage and maintenance, repairs and replacements, as may be determined by the Board, to the extent not covered by insurance. The Board shall have exclusive authority to take, or refrain from taking, any action pursuant to this ARTICLE VIII, Section 1. All expenses which, pursuant to this ARTICLE VIII, Section 1, are chargeable to any Unit Owner, may be specifically assessed to such Unit Owner and shall be payable by such Unit Owner as prescribed by the Board.

2. Limited Common Elements. Any charge or expense in connection with expenditures for the Limited Common Elements may be assessed only against those Units to which such Limited Common Elements are assigned.

3. Alterations, Additions or Improvements. No alterations of any Common Elements or any additions or improvements thereto shall be made by any Unit Owner without the prior written approval of the Board. Any Unit Owner may make alterations, additions and improvements within his Unit without the prior written approval of the Board, but in any event such Unit Owner shall be responsible for any damage to other Units, the Common Elements, or the Property as a result of such alterations, additions or improvements. Nothing shall be done in any Unit, or in, on or to the Common Elements which will impair the structural integrity of the Building or which would structurally change the Building.

4. Decorating. Each Unit Owner shall furnish and be responsible for, at his own expense, all of the decorating within his own Unit from time to time, including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. The use of and the covering of the interior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the Building, shall be subject to the rules and regulations of the Board. Decorating of the Common Elements (other than interior surfaces within the Units as above provided), and any redecorating of Units to the extent made necessary by any damage to existing decorating of such Units caused by maintenance, repair or replacement work on the Common Elements by the Board, shall be furnished by the Board as part of the Common Expense.

## ARTICLE IX

### SALE, LEASE OR OTHER ALIENATION

(a) Unrestricted Transfers. Subject to Paragraph (b) below, a Unit Owner may, without restriction under the Declaration, sell, give, devise, lease or otherwise transfer his entire Unit, and not less than his entire Unit. Under no circumstances shall the total number of leased units in the building exceed a total of 6 at any given time. Notice of any such unrestricted transfer shall be given to the Board, in the manner provided for the giving of notices, within five (5) days following consummation of such transfer.

(b) Limits on Lease Terms. Each lease of anyone or more Units shall be for an initial term of not less than 30 days, be in writing and a copy of every such lease, as and when executed, shall be furnished to the Board. The lessee under every such lease shall be bound by and subject to all of the obligations, under the Declaration and By-Laws, of the Unit Owner making such lease and the failure of the lessee to comply therewith shall constitute a default under the lease which shall be enforceable by the Board or the Association, and the lease shall be deemed to expressly so provide. The Unit Owner making such lease shall not be relieved thereby from any of said obligations.

(c) Association as Owner. The Association shall hold title to or lease any Unit, pursuant to the terms hereof, in the name of the Association, or as nominee thereof delegated by the Board, for the sole benefit of all Unit Owners. The Board shall have the authority at any time to sell, lease or sublease said Unit on behalf of the Association upon such terms as the Board shall deem desirable, but in no event shall a Unit be sold for less than the amount paid by the Association to purchase said Unit unless Unit Owners owning not less than sixty-seven percent (67%) of the total ownership of the Common Elements first authorize the sale for such lesser amount. All of the net proceeds from such a sale, lease or sublease shall be applied in such manner as the Board shall determine.

(d) Rules and Regulations. The Board may adopt regulations, from time to time, not inconsistent with the provisions of this Article IX, for the purpose of implementing and effectuating said provisions.

## ARTICLE X

### DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDING

1. Sufficient Insurance. In the event the improvements forming a part of the Property, or any portion thereof, including any Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds shall be applied by the Board or the payee of such insurance proceeds in payment therefor; provided, however, that in the event within one-hundred and eighty (180) days after said

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damage or destruction, the Unit Owners shall elect either to sell the Property as hereinafter provided in this ARTICLE X or to withdraw the Property from the provisions of this Declaration and from the provisions of the Act, as therein provided, then such repair, restoration or reconstruction shall not be undertaken. In the event such repair, restoration or reconstruction is not undertaken, the net proceeds of insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit "B," after first paying out the share of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens.

2. Insufficient Insurance. (a) If the insurance proceeds are insufficient to reconstruct the Building and the Unit Owners and all other parties in interest do not voluntarily make provision for reconstruction of the Building within one-hundred and eighty (180) days from the date of damage or destruction, the Board of Managers may record a notice setting forth such facts, and upon the recording of such notice:

(i) The property shall be deemed to be owned in common by the Unit Owners;

(ii) The undivided interest in the Property owned in common which shall appertain to each Unit Owner shall be the percentage of undivided interest previously owned by such owner in the Common Elements;

(iii) Any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Unit Owner in the Property as provided herein; and

(iv) The Property shall be subject to an action for partition at the suit of any Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Unit Owners in a percentage equal to the percentage of undivided interest owned by each owner in the Property, after first paying out of the respective share of the Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Unit Owner.

(b) In the case of damage or other destruction in which fewer than one-half (112) of the Units are rendered uninhabitable, upon the affirmative vote of not fewer than sixty-seven percent (67%) of the Unit Owners voting at a meeting called for that purpose, the Building or other portion of the Property shall be reconstructed. The meeting shall be held within thirty (30) days following the final adjustment of insurance claims, if any; otherwise, such meeting shall be held within ninety (90) days of the occurrence of such damage or destruction. At such meeting, the Board of Managers, or its representative, shall present to the members an estimate of the cost of repair or reconstruction, and the estimated amount of necessary assessments against each Unit Owner.

(c) In the case of damage or other destruction in which more than one-half (112) of the Units are rendered uninhabitable, upon the affirmative vote of not fewer than sixty-seven percent (67%) of the Unit Owners voting at a meeting called for that purpose, any portion of the Property affected by such damage or destruction may be withdrawn from the Act. Upon the withdrawal of any Unit or portion thereof, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board of Managers. The payment of just compensation, or the allocation of any insurance or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest therein. Any proceeds available from the withdrawal of any Limited Common Elements will be distributed in accordance with the interests of those entitled to their use.

3. Cessation of Common Expenses. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof by the Unit Owner shall cease.

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## ARTICLE XI

### EMINENT DOMAIN

1. Reallocation of Common Elements and Condemnation Award. Upon the withdrawal of any Unit or portion thereof due to eminent domain, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board of Managers. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be in proportion to a Unit's percentage interest. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest therein. Proceeds available from the withdrawal of any Limited Common Element will be distributed in accordance with the interests of those entitled to their use.

2. Cessation of Common Expenses. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof by the Unit Owner shall cease.

## ARTICLE XII

### SALE OF THE PROPERTY

1. The Unit Owners, through the affirmative vote of voting members having at least seventy-five percent (75%) of the total votes, at a meeting duly called for such purpose, may elect to sell the Property as a whole. Within ten (10) days after the date of the meeting at which such sale was approved, the Board shall give written notice of such action to the holder of any duly recorded mortgage or trust deed against any Unit Ownership entitled to notice under Article XIX of the Declaration. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner or form may be necessary to effect such sale, provided, however, that any Unit Owner who did not vote in favor of such action and who has filed written objection thereto with the Board within twenty (20) days after the date of the meeting at which such sale was approved, shall be entitled to receive from the proceeds of such sale an amount equivalent to the fair market value of his interest, as determined by arbitration as hereafter provided, less the amount of any unpaid assessments or charges due and owing from such Unit Owner. In the absence of agreement on the fair market value of such interest, such Unit Owner and the Board shall each select an appraiser, and the two so selected shall select a third appraiser, and the fair market value, as determined by said third appraiser, shall control. If either party shall fail to select an appraiser, then the one selected by the other party shall make the appraisal. The cost of the appraisal shall be divided equally between such Unit Owner and the Board, and the Board's share shall be a common expense.

## ARTICLE XIII

### BY-LAWS

1. Board of Managers (Board of Directors). (a) The direction and administration of the Property shall be vested in a Board of Managers, consisting of either three (3) or five (5) persons who shall be appointed or elected in the manner herein provided. In the event there are at least three but less than five Unit Owners who accept a nomination to Board, the Board shall be comprised of three members for the following calendar year. If five or more Unit Owners accept nominations to the Board, the Board shall be comprised of five members for the following calendar year. Each member of the Board shall be one of the Unit Owners and shall reside on the Property; provided, however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any officer, director or other designated agent of such corporation, any partner of such partnership, any beneficiary or other designated agent of such trust or any manager of such other legal entity shall be eligible to serve as a member of the Board, provided such person must reside on the Property unless he is a Board Member nominated by the Declarant.

(b) At the first unit owner meeting of the Voting Members, five (5) Board Members shall be elected. In all elections for members of the Board, each Voting Member shall be entitled to cumulate his votes in the manner provided by law, and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Members of the Board elected at the first unit owner meeting of the Voting Members shall serve until the first annual meeting of the Voting Members. Board members elected at the first annual meeting and all subsequent elections shall serve one year terms of office and shall be elected at large. The term of each duly elected Board of Directors shall begin on January 1 following the annual meeting at which nominations for that Board are first accepted and shall continue until December 31 of that same year. Officers and Board Members may succeed themselves. The Voting Members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease the term of office of Board Members at any annual or special meeting. Members of the Board shall receive no compensation for their

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services unless expressly authorized by the Board with the approval of Voting Members having two-thirds (2/3) of the total votes. In the event of a vacancy on the Board, the remaining members of the Board shall have authority to fill said vacancies by a two-thirds (2/3) vote until the next annual meeting or for a period terminating no later than thirty (30) days following the filing of a petition by Unit Owners holding twenty percent (20%) of the votes of the Association requesting a meeting of the Unit Owners to fill the vacancy for the balance of the term. Except as otherwise provided in this Declaration, the Property shall be managed by the Board, and the Board shall act by majority vote of those present at its meetings when a quorum exists. A majority of the total number of the Members of the Board shall constitute a quorum. Meetings of the Board may be called, held and conducted in accordance with such resolutions as the Board may adopt.

(c) The Board shall elect from among its members a President who shall preside over its meetings and over those of the Voting Members. The President shall be the chief executive officer of the Board and the Association and shall execute amendments to the Condominium Instruments. The Board also shall elect from among its members: a Secretary, who shall keep the minutes of all meetings of the Board and of the Voting Members, who shall mail and receive all notices, and who shall, in general perform all the duties incident to the office of Secretary; and a Treasurer to keep the financial records and books and accounts of the Association. The term of the officers shall be for a period of one year. In the event of a vacancy among the Officers, the members of the Board shall have the authority to fill said vacancy for the unexpired portion of the term.

(d) Any Board member may be removed from office by affirmative vote of the Voting Members having at least two-thirds (2/3) of the total votes, at any special meeting called for that purpose. A successor to fill the unexpired term of a removed Board member may be elected by the Voting Members at the same meeting or any subsequent meeting or special meeting called for that purpose.

(e) The Board shall meet at least four (4) times annually, and at such other times as the Board deems necessary. Meetings of the Board shall be open to any Unit Owner; notice of any such meeting shall be mailed or delivered at least forty-eight (48) hours prior thereto, unless a written waiver of such notice is signed by the person or persons entitled to such notice before the meeting is convened; and copies of notices of meetings of the Board of Managers shall be posted in entrance ways, elevators, or other conspicuous places in the Building at least forty-eight (48) hours prior to the meeting of the Board of Managers.

2. General Powers of the Board. (a) The powers and duties of the Board of Managers shall include, but shall not be limited to, the following matters:

- (1) Operation, care, upkeep, maintenance, replacement and improvement of the Common Elements.
- (2) Preparation, adoption and distribution of the annual budget for the Property and an audited financial statement for the Association.
- (3) Levying and expending of assessments.
- (4) Collection of assessments from Unit Owners.
- (5) Employment and dismissal of the personnel necessary for the maintenance and operation of the Common Elements.
- (6) Obtaining adequate and appropriate kinds of insurance.
- (7) Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to or purchased by it.
- (8) Adoption and amendment of rules and regulations covering the details of the maintenance, administration, management, operation, use, conservation, and beautification of the Property, and for the health, comfort, safety, and general welfare of the Unit Owners and Occupants of the Building, after a meeting of the Unit Owners called for the specific purpose of discussing the proposed rules and regulations, notice of which shall contain the full text of the proposed rules and regulations and which shall conform to the requirements of Section 18(b) of the Act; provided, however, that no rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution. Unless the Declaration, By-Laws, or other Condominium Instruments expressly provide to the contrary, no quorum shall be required at the meeting of the Unit Owners called for the purpose of approving the rules and regulations.
- (9) Keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property.
- (10) To have access to each Unit from time to time as may be necessary for the maintenance, repair or replacement of any Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to other Unit or Units.

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- (11) Pay real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the Property.
- (12) Impose charges for late payments of a Unit Owner's proportionate share of the common expenses, or any other expenses lawfully agreed upon; and after notice and an opportunity to be heard, levy reasonable fines for violation of the Declaration, By-Laws, and rules and regulations of the Association.
- (13) Assign its right to future income, including the right to receive common expenses.
- (14) Record the dedication of a portion of Common Elements to a public body for use as, or in connection with a street or utility, where authorized by the Unit Owners under the provisions of the Act.
- (15) Record the granting of an easement for the laying of cable television cable, where authorized by the unit owners under the provisions of the Act.
- (16) To pay for water, waste removal, other operating expenses, electricity, telephone and other necessary utility service for the Common Elements.
- (17) To pay for landscaping, gardening, snow removal, painting, cleaning, tuck-pointing, maintenance, decorating, repair and replacement of the Common Elements (but not including the windows and glass doors appurtenant to the Units, if any, or the interior surfaces of the Units and of the hallway doors appurtenant thereto, which the Unit Owners shall paint, clean, decorate, maintain and repair, except if necessitated by repairs to the Common Elements) and such furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper; and the Board shall have the exclusive right and duty to acquire the same for the Common Elements.
- (18) To pay for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations or assessments which the Board is required to secure or pay for pursuant to the terms of this Declaration or By-Laws or which in its opinion shall be necessary or proper for the maintenance and operation of the Property as a first class condominium apartment building or for the enforcement of these restrictions.
- (19) To pay any amount necessary to discharge any mechanics lien or other encumbrance against the entire Property or any part thereof which may in the opinion of the Board constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Unit Owners. Where one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Board by reason of said lien or liens shall be specially assessed to said Unit Owners.
- (20) (a) To maintain and repair any Unit if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Elements or any other portion of the Building, and the owner of such Unit that has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair was mailed or delivered by the Board to said Unit Owner, provided that the Board shall levy a special assessment against such Unit Owner for the cost of said maintenance or repair.
- (b) The Board or its agent upon reasonable notice may enter any Unit when necessary in connection with all maintenance or construction for which the Board is responsible. Such entry shall be made with as little inconvenience to the Unit Owner as practicable, and any damage caused thereby shall be repaired by the Board as a common expense.
- (c) The Board's powers enumerated in Section 2(a) of this ARTICLE XIII and elsewhere in this Declaration shall be limited in that the Board shall have no authority to acquire and pay for any structural alterations, additions to, or improvements of the Common Elements (other than for purposes of replacing or restoring portions of the Common Elements, subject to all the provisions of the Declaration) requiring an expenditure in excess of Five Thousand Dollars (\$5,000.00) without, in each case, the prior approval of Voting Members having sixty-seven percent (67%) of the total votes.
- (d) All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments of the Association shall be signed by such officers or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the Treasurer and countersigned by the President of the Board.
- (e) The Board may adopt such reasonable rules and regulations, not inconsistent herewith, as it may deem advisable for the maintenance, administration, management, operation, use, conservation and beautification of the Property and for the health, comfort, safety and general welfare of the Unit Owners and Occupants, and the entire Property shall at all times be maintained subject to such rules and regulations.

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(f) The Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board.

(g) Nothing hereinabove contained shall be construed to give the Board, the Association, or the Unit Owners authority to conduct an active business for profit on behalf of all the Unit Owners or any of them.

(h) Upon authorization by an affirmative vote of 2/3 of the members of the Board of Directors, the Board, acting on behalf of all Unit Owners, shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, any special assessments and any other special taxes or charges of the State of Illinois or any political subdivision thereof, or any other lawful taxing or assessing body, which are authorized by law to be assessed and levied on real property. Notice of such action shall be provided as soon as is practicable after the Board's vote to all Unit Owners pursuant to the notice provisions contained in the Bylaws. The fees for such expenses shall be Common Expenses as defined in the Bylaws.

(i) The Board shall have no right of first refusal with respect to the transfer of a Unit Owner's Unit.

## ARTICLE XIV

### MEMBERS (UNIT OWNERS)

1. Voting Rights. There shall be one person with respect to each Unit who shall be entitled to vote at any meeting of the Unit Owners. Such Voting Members shall be the Unit Owner or one of the group composed of all the Unit Owners of a Unit, or may be some person designated by such Unit Owners to act as proxy on his or their behalf and who need not be a Unit Owner. Such designations shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator or by written notice to the Board by the Unit owner or Unit Owners. There shall be deemed to be majority agreement of the owners of a Unit with respect to whom the Voting Member shall be for their Unit if anyone of the multiple owners of a Unit casts the votes allocated to that Unit without immediate protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit. Any or all Unit Owners of a Unit, and their designee, if any, may be present at any meeting of the Voting Members, but only the Voting Member of the Unit may vote or take any other action as a Voting Member, either in person or by proxy. The total number of votes of all Voting Members shall be 100, and each Unit Owner or group of Unit Owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the Common Elements applicable to his or their Unit Ownership, as set forth in Exhibit "B." The Declarant shall designate the Voting Member with respect to any Unit Ownership owned by the Declarant. The Association shall have one class of membership only, and nothing contained in these Condominium Instruments shall permit or allow different classes of membership among the Unit Owners.

2. Meetings. (a) Meetings of the Voting Members shall be held at the Property or at such other place in Cook County, Illinois as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of the Voting Members of at least a majority of the Voting Members and Voting Members having a least a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total votes represented at such meeting.

(b) The election of the first Unit owner Board of Managers, which shall be held at the initial meeting of the Voting Members, shall be held not later than 120 days after the conveyance by the Developer of seventy-five (75%) of the Units or three (3) years after the recording of the Declaration, whichever is earlier. The Trustee or Developer shall give at least twenty-one (21) days notice of the meeting to elect the first unit owner Board of Managers and shall provide to any Unit Owner, within three (3) working days of request, the names, addresses and weighted vote of each Unit Owner entitled to vote at such meeting. Any Unit Owner shall be provided with the same information, within ten (10) days of receipt of request, with respect to each subsequent meeting to elect members of the Board of Managers. There shall be an annual meeting of the Voting Members on the first Wednesday of November following the first unit owner Board meeting and on the first Wednesday of each succeeding November at 7:30 p.m., or at such other reasonable time or date as may be designated by written notice of the Board delivered to the Voting Members not less than ten (10) days or more than thirty (30) days prior to the date fixed for said meeting.

(c) Special meetings of the Voting Members may be called at any time for the purpose of considering matters which, by the terms of this Declaration, require the approval of all or some of the Voting Members or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by a majority of the Board, by Voting Members having one-fifth (1/5) of the total votes, or by the President of the Board and delivered not less than ten (10) days and not more than thirty (30) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered. Matters to be considered at special meeting of the Voting Members shall first be submitted to the Board of Managers at least ten (10) days prior to the special meeting, which shall then submit the matters to the Voting Members.

3. Notices of Meetings. Notices required to be given herein may be delivered personally, by email, by posting in each of the common area entry ways, and/or by mail to the person entitled to notice thereof, addressed to each such person at the address given by

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him to the Board of Managers for the purpose of service of such notice or at the Unit of the Unit Owner with respect to which such voting right appertains if no address has been given to the Board.

4. Miscellaneous. (a) No merger or consolidation of the Association, sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the property and assets of the Association, and no purchase or sale of land or of Units on behalf of all Unit Owners, shall be effectuated unless there is an affirmative vote of sixty-seven percent (67%) of the Unit Owners, unless a greater percentage is otherwise provided for in this Declaration.

(b) When twenty-five percent (25%) or fewer of the Units, by number, possess over fifty percent (50%) in the aggregate of the votes in the Association, any percentage vote of members specified in the Condominium Instruments or the Act shall require instead the specified percentage by number of Units, rather than the percentage of interests in the Common Elements allocated to Units that would otherwise be applicable.

## ARTICLE XV

## ASSESSMENTS – MAINTENANCE FUND

1. Estimated Annual Budget and Assessments. Each year on or before November 1, the Board shall estimate the total amount necessary to pay the cost of all Common Elements which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements. The annual budget shall set forth with particularity all anticipated Common Expenses by category, as well as all anticipated assessments and other income. The budget shall also set forth each Unit Owner's share of the proposed Common Expenses. Each Unit Owner shall receive a copy of the proposed annual budget at least thirty (30) days prior to the adoption thereof by the Board of Managers. The annual budget shall also take into account the estimated net available cash income for the year from the operation or use of the Common Elements, if any. The estimated annual Common Expenses shall be assessed against the Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements, as set forth in Exhibit "B" attached hereto. Each Unit Owner shall receive notice, in the same manner as is provided in this Declaration for membership meetings, of any meeting of the Board of Managers concerning the adoption of the proposed annual budget or any increase in or establishment of assessments, unless a written waiver of such notice is signed by the person or persons entitled to such notice before the meeting is convened. On or before January 1 of the ensuing year, and on the first day of each and every month of said year, each Unit Owner jointly and severally shall be personally liable for and obligated to pay to the Board or as it may direct one-twelfth (1/12) of the assessment against his Unit ownership made pursuant to this Section. On or before April 1 of each calendar year following the year in which the initial meeting is held, the Board shall supply to all Unit Owners an audited accounting of the Common Expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the budget or assessments, and showing the net excess or deficit of income over expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Unit Owner's percentage of ownership in the Common Elements to the next monthly installments due from Unit Owners under the current year estimate, until exhausted, and any net shortage shall be added according to each Unit Owner's percentage of ownership in the Common Elements to the installments due in the succeeding six (6) months after the rendering of the accounting.

If an adopted budget requires assessments against the Unit Owners in any fiscal or calendar year exceeding one hundred fifteen percent (115%) of the assessments for the preceding year, the Board of Managers, upon written petition by Unit Owners with twenty percent (20%) of the votes of the Association filed within fourteen (14) days of the Board action, shall call a meeting of the Unit Owners within thirty (30) days of the date of filing of the petition to consider the budget. Unless a majority of the votes of the Unit Owners are cast at the meeting to reject the budget, it shall be deemed to be ratified, whether or not a quorum is present. In determining whether assessments exceed one hundred fifteen percent (115%) of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the Property and anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis shall be excluded from the computation.

2. Reserves and Adjustments. The Board shall establish and maintain a reasonable reserve for contingencies and replacements. Any extraordinary or nonrecurring common expense, any common expense not set forth in the budget as adopted, and any increase in assessments over the amount adopted shall be separately assessed against all Unit Owners. Any such separate assessment shall be subject to approval by the affirmative vote of at least sixty-seven percent (67%) of the Unit Owners voting at a meeting of such Unit Owners duly called for the purpose of approving the assessment if it involves proposed expenditures resulting in a total payment assessed to a Unit Owner equal to the greater of five (5) times the Unit's most recent common assessment calculated on a monthly basis or three-hundred dollars (\$300.00). All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount. The Association shall have no authority to forebear the payment of assessments by any Unit Owner.

3. Initial Estimate Of Annual Budget. When the first Board elected or appointed hereunder takes office, it shall determine an estimated budget for the period commencing thirty (30) days after said election and ending on December 31st of the calendar year in

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which said election occurs. Assessments shall be levied against the Unit Owners during said period as provided in Section 1 of this ARTICLE XV.

4. Failure to Prepare Estimates. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the Unit Owner shall not constitute a waiver or release in any manner of such Unit Owners obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined; and in the absence of any annual estimate or adjusted estimate, the Unit Owner shall continue to pay the monthly maintenance charge at the then existing monthly rate established for the previous period until the next monthly maintenance payment which is due not more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

5. Books and Records. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for inspection by any Unit Owner or any representative of a Unit Owner duly authorized in writing at such reasonable time or times during normal business hours as may be requested by the Unit Owner. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

6. Use of Funds. All funds collected hereunder shall be held and expended for the purposes designated herein. Except for such special assessments as may be levied hereunder against less than all the Unit Owners and except for such adjustments as may be required to reflect delinquent or prepaid assessments, all funds collected hereunder shall be deemed to be held for the benefit, use and account of all the Unit Owners, in the percentages set forth in Exhibit "B."

7. Insurance. Any insurance premiums assessed on a basis reflecting increased charges for coverage on certain Units shall be assessed to such Units.

8. Assessments. If a Unit Owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the members of the Board may bring suit, for and on behalf of themselves and as representatives of all Unit Owners, to enforce collection thereof or to foreclose the lien therefore as hereinafter provided; and there shall be added to the costs of said suit and other fees and expenses, together with legal interest and reasonable attorneys' fees approved by the Court. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided, shall be and become a lien or charge against the Unit of the Unit Owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate. Such lien shall be subordinate to the lien of a prior recorded purchase money mortgage or trust deed against such Unit, except for the amount of assessments due and payable subsequent to the date on which the encumbrance owner or holder takes possession of the Unit, causes a receiver to be appointed or accepts a conveyance of any interest therein (other than as security). In addition to the foregoing, the Board or its agents shall have such other rights and remedies to enforce such collection as shall otherwise be provided or permitted by law from time to time. Without limiting the generality of the foregoing, if any Unit Owner shall fail to pay his proportionate share of the Common Expenses or of any other expenses required to be paid hereunder when due, the rights and remedies of the Board shall include:

(1) the right to enforce the collection of such defaulting Unit Owner's share of such expenses (whether due by acceleration or otherwise), together with interest thereon at the maximum rate permitted by law, and all fees and costs (including reasonable attorney fees) incurred in the collection thereof;

(2) the right to take possession of the defaulting Unit Owner's interest in the Property, to maintain for the benefit of all the other Unit Owners an action for possession pursuant to the statutes of the State of Illinois, as amended, and to execute leases of such defaulting Unit Owner's interest in the Property and to apply the rents derived therefrom against such expenses.

9. Abandonment. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Elements or by abandoning his Unit.

## ARTICLE XVI

### COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The Units and Common Elements shall be owned, occupied and used subject to the following covenants and restrictions:

1. General Use. No part of the Property shall be used for other than housing and related common purposes for which the Property was designed. Each Unit or any two or more adjoining Units used together shall be used as a residence for a single family, unless designated as a parking unit, and for no other purpose. That part of the Common Elements separating any two or more



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adjoining Units used together as aforesaid may be altered to afford ingress and egress to and from such adjoining Units in such manner and upon such conditions as shall be determined by the Board in writing.

2. **Obstruction of Common Elements and Unit Maintenance.** There shall be no obstruction of the Common Elements without prior written consent of the Board, except as herein expressly provided. Each Unit Owner shall be obligated to maintain and keep in good order and repair his own Unit.
3. **Prohibited Use.** Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Building or on the contents thereof, applicable for residential use, without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the Building, or on the contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Elements. No Unit Owner shall overload the electric wiring in the Building, operate any machines, appliances, accessories or equipment in such a manner as to cause, in the judgment of the Board, an unreasonable disturbance to others, or connect any machines, appliances, accessories or equipment to the heating or plumbing system without the prior written consent of the Board.
4. **Unit Owner Insurance.** Each Unit Owner shall be responsible for his own insurance on his personal property in his own Unit, his personal property stored elsewhere on the Property and his personal liability to the extent not covered by the liability insurance for all the Unit Owners obtained by the Board as hereinbefore provided.
5. **Exterior Attachments.** Unit Owners shall not cause or permit anything to be placed on the outside walls of the Building, and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof of the Building or any part thereof without the prior written consent of the Board.
6. **Window Treatment.** The use and the covering of the interior surfaces of the glass windows and/or doors appurtenant to the Units of the Building, whether by draperies, shades or other items visible from the exterior of the Building, shall be subject to the rules and regulations of the Board.
7. **Pets, etc.** No animals of any kind shall be raised, bred or kept in any Unit or in the Common Elements, except that dogs, cats, or other household pets may be kept in Units subject to rules and regulations adopted by the Board, provided that they are not kept, bred or maintained for any commercial purpose, and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days' written notice from the Board.
8. **Nuisances.** No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants.
9. **Unsigniffliness.** No clothes, sheets, blankets, laundry or any similar kind of articles shall be hung or exposed on any part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials.
10. **Commercial Activities.** No industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational, or otherwise, and whether designated for profit, altruism, exploration, or otherwise, shall be conducted, maintained or permitted in any Unit unless specifically permitted under the provisions of the Municipal Code of the City of Chicago.
11. **For Sale and For Rent Signs.** No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Property, except at such location and in such form as shall be determined by the Board; provided that the right is reserved by the Declarant, the Developer and their agents to maintain on the Property, until the sale of the last Unit, all models, sales offices and advertising signs, banners, and lighting in connection therewith, at such locations and in such forms as they shall determine, together with the right of ingress, egress and transient parking therefor through the Common Elements.
12. **Common Elements.** Nothing shall be altered or constructed in or removed from the Common Elements, except upon prior written consent of the Board.
13. **Exceptions.** The Unit restrictions in paragraphs 1 and 11 of this ARTICLE XVI shall not be construed in such a manner as to prohibit a Unit Owner from: (a) maintaining his professional library therein, (b) keeping his personal business or professional records or accounts in his Unit, or (c) handling his personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation of Sections 1 and 11 of this ARTICLE XVI.

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## ARTICLE XVII

### REMEDIES FOR BREACH OF COVENANTS, RESTRICTIONS AND REGULATIONS

1. Abatement and Enjoyment. The violation of any restriction, condition or regulation adopted by the Board, or the breach of any covenant or provision herein contained, shall give the Board the right, in addition to the rights set forth in the next succeeding section:

(a) to enter upon that part of the Property where such violation or breach exists, after thirty (30) days written notice by the Board, and summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and the provisions hereof, and the Declarant, the Developer, or their successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; or

(b) to enjoin, abate or remedy by appropriate legal proceeding, either at law or in equity, the continuance of any breach. All expenses of the Board in connection with such actions or proceedings, including court costs and attorneys' fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of eighteen percent (18%) per year, or the maximum rate allowed by law, if lesser, until paid, shall be charged to and assessed against such defaulting Unit Owner and shall be added to and deemed part of his share of the Common Expenses, and the Board shall have a lien for all of the same upon such defaulting Unit Owner's Unit, upon all of his additions and improvements thereto and upon all his personal property in his Unit or located elsewhere on the Property. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise by the Board. Each Unit Owner has the right to enforce the provisions of this Declaration.

2. Involuntary Sale. If any Unit Owner (either by his own conduct or by the conduct of any Occupant of his Unit) shall violate any of the covenants, restrictions or provisions of this Declaration of the By-Laws, or of the rules and regulations adopted by the Board, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall reoccur more than once after such notice, then the Board shall have the power to issue to the defaulting Unit Owner a ten (10) day notice in writing to terminate the right of said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use or control his Unit and thereupon an action in equity may be filed by the members of the Board against the defaulting Unit Owner or a decree of mandatory injunction against the Unit Owner or Occupant or, in the alternative, for a decree declaring the termination of the defaulting Unit Owner's and/or Occupant's right to occupy, use or control the Unit owned by him on account of the said violation and ordering that the right, title and interest of the Unit Owner in the Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale, upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Unit Owner from reacquiring his interest in the Property at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be charged against the defaulting Unit Owner in said decree. Any balance of proceeds, after any liens, shall be paid to the Unit Owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Unit and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be condition of any such sale, and the decree shall provide, that the purchaser shall take the interest in the Property sold subject to this Declaration.

3. Rights of Action. Both the Unit Owners and the Association shall have a right of action against the other for failure to comply with the provisions of this Condominium Declarations, the By-Laws, or with the decisions of the Association made pursuant to authority granted in the said declarations and By-Laws.

4. Arbitration. In disputes in which the matter in controversy has either no specific monetary value or a value of \$10,000.00 or less, other than the levying or collecting of assessments, or that arises out of violations of the declarations, by-laws or rules and regulations of the condominium association, shall be submitted to arbitration. In addition, a dispute not required to be arbitrated by an association pursuant to its powers under this Section, that is submitted to arbitration by agreement of the disputants, is also subject to this Section. The Illinois Uniform Arbitration Act shall govern all arbitration proceedings under this Section, and the disputants shall bear the costs of the arbitration.

## ARTICLE XVIII

### GENERAL PROVISIONS

1. Notice to Mortgagees. Upon written request of the Board, the holder of any duly recorded mortgage or trust deed against any Unit Ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Unit Owner whose Unit is subject to such mortgage or trust deed.

2. Notices to Board Association and Unit Owners. Notices provided for in this Declaration and in the Act shall be in writing and shall be addressed to the Board or Association, or to any Unit Owner, as the case may be, at 1421-29 West Birchwood, Chicago,

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Illinois (indicating thereon the number of the representative Unit if addressed to a Unit Owner), or at such other address as herein provided. The Association or the Board may designate a different address or addresses for notices to them by giving a written notice of such change of address to all Unit Owners. Any Unit Owner may also designate a different address for notices to him by giving written notice of his change of address to the Board or to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof, or if addressed to a Unit Owner, when deposited in his mailbox in the Building or at the door of his Unit in the Building.

3. Notice to Decedent. Notices required to be given to any devisee or personal representative of a deceased Unit Owner may be delivered either personally or by mail to such party at his or its address appearing in the records of the court wherein the estate of such deceased Unit Owner is being administered.

4. Binding Effect. Each grantee of the Declarant, by acceptance of a deed of conveyance, and each purchaser under any contract for a deed of conveyance, shall accept such deed subject to: all restrictions, conditions, covenants, reservations, liens and charges created by this Declaration; and jurisdiction, rights and powers created or reserved by this Declaration; all rights, benefits and privileges of every character hereby granted, created, reserved or declared. All impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and then shall bind any person having at any time any interest or estate in the Property or any Unit and shall inure to the benefit of such Unit Owner in like manner as though the provisions of the Declaration were recited and stipulated at length in act and every deed of conveyance.

5. Waiver. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce to the same, irrespective of the number of violations or breaches which may occur.

6. Amendment. Except as otherwise provided in the Act, in this Declaration, or in the By-Laws, the provisions of the Condominium Instruments may be amended, changed or modified by an instrument in writing setting forth such amendment, change or modification, signed and acknowledged by all of the members of the Board. Any such amendment, change or modification must be approved by vote of at least sixty-seven percent (67%) of the Unit Owners and by the mortgagees required under the provisions of the Condominium Instruments and must contain an affidavit by an officer of the Board certifying that a copy of the amendment, change or modification has been mailed by certified mail to all mortgagees having bona fide liens of record against any Unit not less than ten (10) days prior to the date of such affidavit. Any amendment, change or modification shall conform to the provisions of the Act and shall be effective upon recordation thereof. Until such time as all the Units are conveyed, no change, modification or amendment which affects the rights, privileges or obligations of the Declarant or the Developer shall be effective without the prior written consent of the Declarant or the Developer. Except to the extent authorized by provisions of the Act, no amendment to the Condominium Instruments shall change the boundaries of any Unit or the undivided interest in the Common Elements, the number of votes in the Unit Owner's Association, or the liability for Common Expenses appertaining to a Unit.

7. Special Amendment. The Declarant or the Developer and their designees reserve the right and power to record a Special Amendment to this Declaration at any time and from time to time which amends this Declaration:

(i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Unit Ownership; (iii) to bring this Declaration into compliance with the Act or the requirements of local law or ordinance; or (iv) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant or the Developer or their designee to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and consent to the reservation of, the special Amendment herein. The power of the Declarant, the Developer or their designees under this Section shall terminate upon the last to occur of (i) seven (7) years from the date of recording of the Declaration or (ii) such time as the Declarant, the Developer or their designee no longer holds or controls title to any part of the development area.

8. Invalidity. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration.

9. Perpetuities and Restraints. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rules restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last to die of the now living lawful descendants of George W. Bush, President of the United States, and Peter Fitzgerald, Senator of the State of Illinois.

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10. Liens. In the event any lien exists against two (2) or more Units and the indebtedness secured by such lien is due and payable, the Unit Owner of any such Unit so affected may remove such Unit and the undivided interest in the Common Elements appertaining thereto from such lien by payment of the proportional amount of such indebtedness attributable to such Unit. In the event such lien exists against the Unit or against the Property, the amount of such proportional payment shall be computed on the basis of the Unit's interest in the Common Elements set forth in the Declaration. Upon payment as herein provided, it is the duty of the encumbrance to execute and deliver to the Unit Owner a release of such Unit and the undivided interest in the Common Elements appertaining thereto from such lien.

The owner of such Unit shall not be liable for any claims, damages or judgments entered as a result of any action or inaction of the Board of Managers of the Association other than for mechanics' liens as hereinafter set forth. Each Unit Owner's liability for any judgment entered against the Board of Managers of the Association, if any, shall be limited to his proportionate share of the indebtedness as set forth herein, whether collection is sought through assessment or otherwise. A Unit Owner shall be liable for the claim, damage or judgment entered as a result of the use or the operation of his Unit, or caused by his own conduct. The Developer shall be liable alone for payment of any lien, including mechanics' liens, damage or judgments which result from any contract entered into by it or any tort committed by it, or by its agents or employees in connection with the Property or any addition thereto.

If as a result of work expressly authorized by the Board of Managers, a mechanics' lien claim is placed against the Property or any portion of the Property, each Unit Owner shall be deemed to have expressly authorized the work for which the claim is made and to have consented thereto and shall be liable for the payment of his Unit's proportionate share of any due and payable indebtedness.

11. Release of Claims. Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner, Occupant, the Association, its officers, members of the Board, the Declarant, the Developer, the managing agent, and their respective employees and agents, for damage to the Common Elements, the Units, or to any personal property located in the Units or Common Elements caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance.

12. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first class condominium apartment building.

13. Headings. The headings and captions contained herein are inserted for convenient reference only and shall not be deemed to construe or limit the Sections and ARTICLES to which they apply.

## ARTICLE XIX

### FIRST MORTGAGEE'S RIGHTS

1. First Mortgagees' Consent. Notwithstanding the other Articles of this Declaration, the prior written approval of sixty-seven percent (67%) of the mortgage lenders holding first mortgages on the Units will be required for the Association to do or permit to be done any of the following:

- (a) Adoption of an amendment to this Declaration which changes the undivided interests of the Units in the Common Elements, except for amendments to this Declaration resulting from the addition of Units or contractions of the condominium as a result of substantial damage to portions of Property or condemnation;
- (b) The abandonment or termination of the condominium;
- (c) The partition or subdivision of a Unit;
- (d) The abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Elements, except for the dedication of portions of the Common Elements or the granting of easements for public utilities or for other public purposes consistent with the intended use of the Property;
- (e) The sale of the Property;
- (f) The removal of a portion of the Property from the provisions of the Act and of this Declaration;
- (g) The use of hazard insurance proceeds for losses of the Condominium Property (whether to Units or to the Common Elements) for other than the repair, replacements or reconstruction of such Units or Common Elements. However, the consent of first mortgagees will not be required with respect to any action under (a) through (g) above which occurs as a result of (i) substantial

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damage due to fire or other casualty (including, without limitation, action taken pursuant to ARTICLE X; or (ii) a taking of a portion of all of the Property by condemnation or eminent domain (including without limitation, action taken pursuant to ARTICLE XI).

Timely written notice of any of the foregoing actions shall be required of the Association if requested by a holder, insurer or guarantor of a first mortgage on a Unit, including notice of any delinquency in assessments owed by a Unit Owner of the subject Unit; change in the number of votes pertaining to any Unit or the interest of the Unit Owner in the common elements or any limited common elements; and any lapse, cancellation or material modification to the insurance policy of the Association.

## ARTICLE XX

### NOTICE TO FIRST MORTGAGEES

Each Unit Owner shall notify the Association of the name and address of his first mortgagee and the Association shall maintain a record of such information with respect to all Units in a book entitled "Mortgagees of Units." Each first mortgagee shall have the right to examine the books and records of the Association at any reasonable time. Upon the specific written request of a first mortgagee to the Board, the first mortgagee shall receive some or all of the following as designated in the request:

- (a) Copies of budgets, notice of assessment, or any other notices or statements provided under this Declaration by the Association to the Unit Owner of the Unit covered by the first mortgagee's mortgage;
- (b) Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Unit Owners;
- (c) Copies of notices of meetings of the Unit Owners and the right to be represented at any such meetings by a designated representative;
- (d) Notice of any decision by the Unit Owners to make any material amendment to this Declaration, the By-Laws, or the Articles of Incorporation of the Association;
- (e) Notice of substantial damage to or destruction of any Unit in excess of \$5,000.00 or any part of the Common Elements in excess of \$10,000.00;
- (f) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Property; or
- (g) Notice of any default of the Unit Owner of the Unit which is subject to the first mortgagee's mortgage, where such default is not cured by the owner within thirty (30) days after the giving of notice by the Association to the Unit Owner of the existence of the default. The request of a first mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association. Failure of the Association to provide any of the foregoing to a first mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The association need not inquire into the validity of any request made by a first mortgagee hereunder and in the event of multiple requests from purported first mortgagees of the same Unit, the Association shall honor the most recent request received.

## ARTICLE XXI

### INSURANCE PROCEEDS/CONDEMNATION AWARDS

In the event of (i) any distribution of any insurance proceeds hereunder as a result of substantial damage to, or destruction of, any part of the Property, or (ii) any distribution of the proceeds of any award or settlement as a result of condemnation or eminent domain proceedings with respect to any part of the Property, any such distribution shall be made to the Unit owners and their respective first mortgagees, as their interests may appear, and no Unit Owner or other party shall be entitled to priority over the first mortgagee of a Unit with respect to any such distribution to or with respect to such Unit; provided, however, that nothing in this Section shall be construed to deny to the Association the right to apply any such proceeds to repair or replace damaged portions of the Property after a casualty occurrence or after condemnation or taking by eminent domain of a part of the Property.

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## ARTICLE XXII

### MISCELLANEOUS

1. Failure to Enforce. No terms, obligations, covenants, conditions, restrictions or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce the same, no matter how many violations or breaches may occur.

THOMAS M PARIS  
BBCA BOARD PRESIDENT

Thomas M Paris      OCTOBER 14, 2011

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IN WITNESS WHEREOF, the said Declarant has caused this instrument to be signed and sealed in Chicago, Illinois, this 14<sup>th</sup> day of October, 2011. STATE OF ILLINOIS, COUNTY OF COOK.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Birchwood Beach Condominium Association, LLC by its duly authorized officer, appeared before me this day in person and acknowledged that it signed and delivered the said instrument as its free and voluntary act for the purposes set forth therein, under my hand and notarial seal this 14<sup>th</sup> day of October, 2011.

Notary Public for Mr Thomas M Paris, BBCA Board President



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